



State of New Hampshire

PUBLIC EMPLOYEE LABOR RELATIONS BOARD

AFSCME Council 93, Local 2301, Seabrook
Supervisory Employees

Complainant

v.

Town of Seabrook

Respondent

Case No. M-0592-16

Decision No. 2001-090

MOTION TO DISMISS (CLAIM AND COUNTERCLAIM)

The Board, meeting at its offices in Concord, New Hampshire, on September 20, 2001, took the following actions:

1. It reviewed the pleadings in this matter, inclusive of the Union's unfair labor practice (ULP) complaint filed on June 27, 2001, the Town's answer filed on July 12, 2001, the Town's Motion to Dismiss and Counterclaim both filed on August 21, 2001, and the Union's answer to and Motion to Dismiss that Counterclaim, both filed on September 17, 2001.
2. It convened for the purposes of the hearing the parties' respective positions on the complaint, answer, counterclaims and procedural motions. Both parties, represented by counsel, presented oral argument on the motions to dismiss both the claim and counterclaim. During the course of their presentations, the PELRB was advised that both an arbitrator and a date had been determined and set jointly by the parties and that the underlying grievance is currently awaiting hearing at that level.
3. It noted, notwithstanding the Union's claim that Article 10.1 of the collective bargaining agreement (CBA) calls for resolution of grievances at the "lowest possible level," that Article 10.3.2 of that same agreement provides:

Failure at any grievance level to meet or to communicate
the decision within the specified time limits to the president

of the Union or his designee shall permit the Union to proceed to the next level.

4. It reviewed Article 10.2 of the CBA which defines grievance, to wit:
"For the purposes of this agreement, a grievance is defined as those disputes involving the interpretation, application or alleged violation of any provision of this Agreement." For the purpose of these proceedings, the PELRB found that the parties have a dispute in the form of the grievance, dated April 17, 2001 and attached to the ULP, which comports with the definition found in Article 10.2 of the CBA.
5. It directed that the parties proceed to the scheduled grievance arbitration hearing, inasmuch as they have a grievance as defined by Article 10.2 and they are thus "required to follow the agreed-upon grievance procedure. It is well-settled that grievance language specifically negotiated and agreed upon is binding upon both the public employee and the public employer." Appeal of State, Supreme Court Docket No. 98-761 (slip op., February 1, 2001) citing to Appeal of Hooksett School District, 126 N.H. 202 (1985).
6. It GRANTED the Town's motion to dismiss the ULP and GRANTED the Union's motion to dismiss the Town's counterclaim.

So ordered.

Signed this 25th day of September, 2001


BRUCE K. JOHNSON
Alternate Chairman

By unanimous decision. Alternate Chairman Bruce K. Johnson presiding. Members Richard Roulx and Richard Molan present and voting.